

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
SOUTHEAST IOWA GRAIN CORPORATION	NO. 2007-AQ-22
Henry County, Iowa	

TO: Southeast Iowa Grain Corporation
Daniel Gabeline, Registered Agent
25900 205th Ave
Yarnmouth, IA 52660

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Southeast Iowa Grain Corporation (SE Iowa Grain) for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) and open burning violations which occurred at SE Iowa Grain's facility in New London, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Terry Jones, Environmental Specialist
DNR Field Office 6
1023 W. Madison
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative

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Code ("IAC") chapter 10, which authorize the director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. SE Iowa Grain owns the commercial elevator facility at 203 E. Burlington Street in New London, Iowa. The site contains a commercial elevator with several grain bins and other related structures. SE Iowa Grain uses the bins for storage of corn and soy beans grown from its farming operations.

2. On June 6, 2007, Field Office 6 received a complaint from the Henry County Emergency Management Coordinator of open burning at a site owned by SE Iowa Grain in New London, Iowa. The complaint stated that demolition and burning activities at this elevator had begun approximately three weeks earlier. Terry Jones, DNR Field Office 6 environmental specialist, arrived at the elevator site to investigate the complaint. No one was present when Mr. Jones arrived at the New London site. He contacted SE Iowa Grain's registered agent, Daniel Gabeline, who arrived at the site with Brad Ewart of Millwright, LLC. Millwright, LLC. was the contractor conducting the demolition for SE Iowa Grain. Mr. Jones informed Mr. Gabeline that SE Iowa Grain was in violation of open burning regulations and inquired if SE Iowa Grain had notified DNR before beginning demolition and if an asbestos inspection had been completed prior to demolition. Mr. Gabeline stated that he was unaware of these requirements. Mr. Jones instructed Mr. Gabeline to let the fire burn down and to refrain from adding additional material to the fire. They also discussed disposal options for the remaining material.

3. On June 6, 2007, Mr. Jones also met with Thomas Cipolli, New London Police Chief. Chief Cipolli stated that the burning had been ongoing for several days and that officers had responded to burning activities on multiple occasions. Mr. Jones requested reports from the city concerning SE Iowa Grain burning activities.

4. On June 8, 2007, a Notice of Violation letter was issued to SE Iowa Grain for open burning of combustible material, failure to conduct a thorough inspection prior to demolition, and failure to submit an asbestos NESHAP notification prior to demolition. The letter instructed SE Iowa Grain to dispose of any material, not recyclable or reusable, at a permitted disposal facility, to submit a written plan of action for proper disposal of the remaining structure by June 20, 2007, and upon completion of cleanup submit documentation verifying the final disposition of material. The letter also stated that the matter was being referred for review and further compliance action.

5. On June 14, 2007, DNR received an email from Chief Cipolli identifying the dates of May 1, 2007, May 30, 2007, and June 1, 2007 as additional burn dates at the elevator site.

6. On June 20, 2007, DNR received information from Chief Cipolli that the entire elevator site had been bulldozed and that only dirt remained. DNR also received a fax

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from SE Iowa Grain reporting that material from the elevator site was being hauled to its shop in Yarmouth. The remaining wood would be burned for indirect heating and the metal would be hauled to Feinberg's Recycling Center.

7. On June 25, 2007, DNR informed Mr. Gabeline via email that it was acceptable to burn clean wood for reheating purposes, provided the furnace is rated at 1 million BTU's or less. DNR also request documentation of proper disposal or recycling information by July 3, 2007 and reiterated that burying or dumping material at another location is not allowed.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR section 61.145(b)"1" requires that written notification of a demolition be submitted to the DNR prior to beginning demolition. The specific requirements for this notification are contained in the subsection. SE Iowa Grain failed to submit a notification before beginning demolition at its site in New London, Iowa. The above facts indicate a violation of this provision.

3. 40 CFR 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to commencement of demolition or renovation. SE Iowa Grain failed to conduct a thorough inspection prior to commencement of the demolition. The above facts indicate a violation of this provision.

4. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). New London Police notified DNR of three dates when they had been called to the SE Iowa Grain elevator site because of open burning in addition to the final date when DNR conducted its investigation. The above facts demonstrate violations of this provision.

5. 567 IAC 23.2(1)"i" provides an exemption for the open burning of agricultural structures located within a city or town however, the paragraph specifically states the burning must be conducted at least one-fourth mile from any building inhabited by a person other than the landowner, a tenant, or an employee of the landowner or tenant conducting the open burning. There were inhabited buildings within one-fourth mile of the New London burn site; therefore the burning does not meet this exemption.

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V. ORDER

THEREFORE, the DNR orders and SE Iowa Grain agrees to do the following:

1. SE Iowa Grain shall submit receipts documenting disposal of remaining materials at a licensed disposal site within 60 days of the date from which the Director signs this administrative consent order; and
2. SE Iowa Grain shall pay a penalty of \$6,500.00 within 60 days of the date from which the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$6,500.00. The administrative penalty is determined as follows:

Economic Benefit – SE Iowa Grain saved time and money by improperly burning the elevator debris instead of taking the debris to a landfill. Because most of the demolished material appeared to be wood and metal the landfill fees would have been minimal resulting in a limited economic benefit by not disposing of them at the landfill. However, a more significant economic benefit was gained through the minimization of transportation costs. Because half of the material was burned on site, SE Iowa Grain did not have to pay to have that material hauled to the landfill. A further economic benefit was gained by SE Iowa Grain's failure to conduct a thorough inspection and sample suspect material. Based on the above considerations, \$3,000.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to follow proper procedures to properly remove and dispose of the regulated asbestos containing material may create an environmental hazard to the workers and general public through the likely release of asbestos fibers. The demolition at the New London site caused air pollution from any

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asbestos-containing material present in the demolished buildings. The open burning of the waste released more toxins into the air. The site was also within a quarter mile of occupied residences who could have been exposed to emissions resulting from the burning activity. Based on the above considerations, \$3,000.00 is assessed for this factor.

Culpability - SE Iowa Grain has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. SE Iowa Grain responded in a timely manner in ceasing burning activities and has indicated it will recycle or reuse the remaining material. Based on the above considerations, \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of SE Iowa Grain. For that reason SE Iowa Grain waives its rights to appeal this administrative consent order or any part thereof.


VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 30 day of
October, 2007.



For SOUTHEAST IOWA GRAIN CORPORATION

Dated this 17 day of
Oct, 2007.

Barb Stock (Con 10-6 Henry County); Kelli Book; Field Office 6; Dan Stipe; VI.D., VII.C.1, and VII.C.4